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Sheila Sharon a/p Steven Kumar v Public Prosecutor

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPLICATION NO B-07–89–09 OF 2023
HADHARIAH SYED ISMAIL, AZMAN ABDULLAH AND AZMI ARIFFIN JJCA
6 MARCH 2024

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Criminal Procedure — Appeal — Application for leave — Applicant filed for leave to appeal pursuant to s 50(2) of Courts of Judicature Act 1964 — High Court in revision substituted order of discharge amounting to acquittal with order of discharge not amounting to acquittal — Decision made in absence of applicant — Whether questions of law had arisen in course of revision

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On 26 June 2023, the applicant was charged in the magistrate's court under Charge Sheet No BD-82–6–06/2023 with two offences under ss 506 and 509 of the Penal Code respectively. The applicant pleaded not guilty and claimed trial to the charges. The applicant was released on bail. Immediately thereafter, two similar and same offences under ss 506 and 509 of the Penal Code under Charge Sheet No BD-82–8–06/2023 were levelled against the applicant. The applicant pleaded not guilty and claimed trial to the charges. However, the deputy public prosecutor then applied to withdraw the two offences under the Charge Sheet No BD-82–8–06/2023 without giving any reasons for the said withdrawal and requested for a discharge not amounting to an acquittal ('DNAA'). The defence objected and requested for a discharge amounting to an acquittal ('DNA'). The learned magistrate allowed the defence application and ordered that the applicant be discharged amounting to an acquittal on the second two similar and same charges under the Charge Sheet No BD-82–8–06/2023. After almost one and a half months from the decision of the learned magistrate, the deputy public prosecutor had written a letter to the High Court for a revision under s 323 of the Criminal Procedure Code of the said decision without informing the applicant and/or her counsel. The revision before the High Court was heard wherein an order of DNA was substituted with an order of DNAA. The said decision was made in the presence of the deputy public prosecutor and in the absence of the applicant and her counsel. The learned judicial commissioner also made a further order in that the applicant could be charged again on the said offences. Aggrieved by the decision, the applicant filed this notice of motion for leave to appeal pursuant to s 50(2) of the Courts of Judicature Act 1964.

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Held, allowing the notice of motion:

(1) The orders of DNAA and a further order that the applicant could be charged again on the said offences made by the learned judicial commissioner upon revision without the applicant and/or her counsel been notified of the hearing of the matter and be given an opportunity of being heard in this matter was gravely prejudicial and had certainly occasioned a serious miscarriage of justice to the applicant. There was a breach of the rules of natural justice in that the audi alteram partem rule had not been observed when the applicant was denied the notice and opportunity to answer the issues and to defend herself. There were questions of law which required serious discussion. Further, although the respondent was not estopped from filing an application for revision in preference to an appeal, nevertheless no reasons had been offered by the deputy public prosecutor why an appeal was not filed against the decision of the learned magistrate within the time permitted by law (see paras 21–22 & 24–25).

[Bahasa Malaysia summary

Pada 26 Jun 2023, pemohon didakwa di mahkamah majistret di bawah Kertas Pertuduhan No BD-82–6–06/2023 dengan dua kesalahan masing-masing di bawah ss 506 dan 509 Kanun Keseksaan. Pemohon mengaku tidak bersalah dan memohon dibicarakan terhadap pertuduhan itu. Pemohon dibebaskan dengan ikat jamin. Sejurus selepas itu, dua kesalahan serupa dan sama di bawah s 506 dan s 509 Kanun Keseksaan di bawah Kertas Pertuduhan No BD-82–8–06/2023 dikemukakan terhadap pemohon. Pemohon mengaku tidak bersalah dan memohon dibicarakan terhadap pertuduhan itu. Walau bagaimanapun, timbalan pendakwa raya kemudiannya memohon untuk menarik balik kedua-dua kesalahan di bawah Kertas Pertuduhan No BD-82–8–06/2023 tanpa memberikan sebarang sebab bagi penarikan balik tersebut dan meminta pelepasan tidak berjumlah pembebasan ('DNAA'). Pihak pembelaan membantah dan meminta pelepasan berjumlah pembebasan ('DNA'). Majistret yang bijaksana membenarkan permohonan pembelaan dan memerintahkan pemohon dilepaskan berjumlah pembebasan atas dua pertuduhan kedua yang serupa dan sama di bawah Kertas Pertuduhan No BD-82–8–06/2023. Selepas hampir satu setengah bulan daripada keputusan majistret yang bijaksana, timbalan pendakwa raya telah menulis surat kepada Mahkamah Tinggi untuk semakan di bawah s 323 Kanun Tatacara Jenayah terhadap keputusan tersebut tanpa memaklumkan kepada pemohon dan/atau peguamnya. Semakan di hadapan Mahkamah Tinggi didengar di mana perintah DNA digantikan dengan perintah DNAA. Keputusan tersebut dibuat di hadapan timbalan pendakwa raya dan semasa ketiadaan pemohon dan peguamnya. Pesuruhjaya kehakiman yang bijaksana juga membuat perintah selanjutnya supaya pemohon boleh didakwa semula atas kesalahan tersebut. Terkilan dengan keputusan itu, pemohon memfailkan notis usul ini untuk kebenaran merayu menurut s 50(2) Akta Mahkamah Kehakiman 1964.

Diputuskan, membenarkan notis usul:

(1) Perintah DNAA dan perintah selanjutnya bahawa pemohon boleh didakwa semula atas kesalahan tersebut yang dibuat oleh pesuruhjaya kehakiman yang bijaksana selepas semakan tanpa pemohon dan/atau peguamnya diberitahu tentang pendengaran perkara itu dan diberi peluang untuk dibicarakan dalam perkara ini adalah sangat memudaratkan dan sudah tentu telah menyebabkan kehilangan keadilan yang serius kepada pemohon. Terdapat pelanggaran peraturan keadilan semula jadi kerana peraturan audi alteram partem tidak dipatuhi apabila pemohon dinafikan notis dan peluang untuk menjawab isu dan membela diri. Terdapat persoalan undang-undang yang memerlukan perbincangan serius. Tambahan pula, walaupun responden tidak dihalang daripada memfailkan permohonan untuk semakan berbanding rayuan, namun tiada alasan telah dikemukakan oleh timbalan pendakwa raya mengapa rayuan tidak difailkan terhadap keputusan majistret yang bijaksana dalam masa yang dibenarkan oleh undang-undang (lihat perenggan 21–22 & 24–25).]

Cases referred to

Ketua Pengarah Kastam v Ho Kwan Seng [1977] 2 MLJ 152, FC (refd)
Manokaran & Anor v PP [1979] 1 MLJ 262 (refd)
Nor Azman bin Ghadzali v PP [2013] 1 MLJ 486, CA (refd)
PP v Sogas Trading [2020] 10 MLJ 258; [2020] MLRHU 127, HC (refd)
PP v Mahathir bin Muhammad [2013] 1 MLJ 50, CA (refd)
PP v Rahmat bin Ghazali and another appeal [2021] 3 MLJ 660, CA (refd)

Legislation referred to

Courts of Judicature Act 1964 ss, 31 50, 50(2)
Criminal Procedure Code ss 323, 325, Chapter XXXI
Federal Constitution arts 7, 8
Penal Code ss 506, 509

Appeal from: *Pendakwa Raya lwn Sheila Sharon a/p Steven Kumar* [2023] MLJU 3277 (High Court, Shah Alam)

M Manoharan (with P Subramaniam and M Hariharan) (M Manoharan & Co) for the appellant.
Zaki Asyraf bin Zubir (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Azmi Ariffin JCA:

CHRONOLOGY OF EVENTS

[1] It is pertinent to set out briefly the chronology of events in order to appreciate the factual matrix of the case.

[2] On 26 June 2023, the applicant was charged in the magistrate's court at Selayang, Selangor under Charge Sheet No BD-82-6–06 of 2023 with two offences under s 506 and 509 of the Penal Code respectively. The charges preferred reads as follows:

> First Charge:
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> Bahawa kamu pada 15/6/2023 jam lebih kurang 12.00 tengahari bertempat di No. 8 Jalan SG 1/1, Taman Sri Gombak, di dalam Daerah Gombak, di dalam Negeri Selangor telah didapati melakukan ugutan jenayah ke atas satu perempuan India bernama Silverkoomarie a/p Muthiah, KPT No: 540725–08–5476 dengan niat untuk mendatangkan kegentaran kepada orang itu. Oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 509 Kanun Keseksaan.
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> Second Charge
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> Bahawa kamu pada 15/6/2023 jam lebih kurang 1.00 tengahari bertempat di No. 8 Jalan SG 1/1, Taman Sri Gombak, di dalam Daerah Gombak, di dalam Negeri Selangor dengan niat untuk menghina kesopanan penama Taneswaran a/l Palaraman KPT No: 821030–14–6229 dengan berkata 'You tenguk badan you, gemuk botak dan badak sumbu'. Oleh yang demikian kamu telah melakukan satu kesalahan di bawah seksyen 506 Kanun Keseksaan.

[3] The applicant pleaded not guilty and claimed trial to the charges. The applicant was released on bail.

[4] Immediately thereafter, two similar and same offences under ss 506 and 509 of the Penal Code under Charge Sheet No BD-82–8–06 of 2023 were levelled against the applicant. The applicant pleaded not guilty and claimed trial to the charges.

[5] However, the learned deputy public prosecutor then applied to withdraw the two offences under the Charge Sheet No BD-82–8–06 of 2023 without giving any reasons for the said withdrawal and requested for a discharge not amounting to an acquittal ('DNAA').

[6] The defence objected and requested for a discharge amounting to an acquittal ('DNA').

[7] After hearing both parties, the learned magistrate allowed the defence application and ordered that the applicant be discharge amounting to an acquittal on the second two similar and same charges under the Charge Sheet No BD-82–8–06 of 2023.

[8] After almost 1 1/2 months from the decision of the learned magistrates, the learned deputy public prosecutor has written a letter dated 11 August 2023 to the High Court for a revision under s 323 of the Criminal Procedure Code of the said decision without informing the applicant and/or her counsel.

[9] The revision before the High Court in Shah Alam was heard on 25 August 2023 wherein an order of DNA was substituted with an order of DNAA. The said decision was made in the presence of the learned deputy public prosecutor and in the absence of the applicant and her counsel. The learned judicial commissioner also made a further order in that the applicant can be charged again on the said offences.

[10] Aggrieved by the decision, the applicant filed notice of motion (encl 1) dated 5 September 2023 for leave to appeal from this honourable court pursuant to s 50(2) of the Courts of Judicature Act 1964.

THE RELEVANT PROVISIONS OF LAW

(a) Courts of Judicature Act 1964:

> 31 Revision of criminal proceedings of subordinate courts.
>
> The High Court may exercise powers of revision in respect of criminal proceedings and matters in subordinate courts in accordance with any law for the time being in force relating to criminal procedure Criminal Procedure Code.
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> 50 Jurisdiction to hear and determine criminal appeals
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> (1) Subject to any rules regulating the proceedings of theCourt of Appeal in respect of criminal appeals, the Court of Appeal shall have jurisdiction to hear and determine any appeal against any decision made by the High Court —
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> (a) in the exercise of its original jurisdiction; and
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> (b) in the exercise of its appellate or revisionary jurisdiction in respect of any criminal matter decided by the Sessions Court.
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> (2) An appeal shall lie to the Court of Appeal, with the leave of the Court of Appeal, against any decision of the High Court in the exercise of its appellate or revisionary jurisdiction in respect of any criminal matter decided by a Magistrates' Court by such appeal shall be confined to only question of law which have arisen in the course of the appeal or revision and the determination of which by the High Court has affected the event of the appeal or revision.

(b) Criminal Procedure Code:

325 Powers of Judge on revision

(1) A Judge may, in any case the record of the proceedings of which has been called for by himself or which otherwise comes to his knowledge, in his discretion, exercise any of the powers conferred by ss 311, 315, 316 and 317 of this Code.

(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard, either personally or by advocate, in his own defence.

(3) Nothing in this section shall be deemed to authorize a Judge to convert a finding of acquittal into one of conviction.

(c) Federal Constitution:

7 Protection against retrospective criminal laws and repeated trials

(1) No person shall be punished for an act or omission which was not punishable by law when it was done or made, and no person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed.

(2) A person who has been acquitted or convicted of an offence shall not be tried again for the same offence except where the conviction or acquittal has been quashed and a retrial ordered by a court superior to that by which he was acquitted or convicted.

8 Equality

(1) All persons are equal before the law and entitled to the equal protection of the law.

PRINCIPLES OF LAWS IN GRANTING LEAVE TO APPEAL

[11] It is trite law that appeals arising from decisions of the magistrate's court in criminal matters that come before the Court of Appeal must necessarily be confined to issues of law only and prior leave is required before an appeal can be lodged in the Court of Appeal. The applicant must show whether or not there exist questions of law while it is not so required on the part of the public prosecutor.

[12] In *Public Prosecutor v Rahmat bin Ghazali and another appeal* [2021] 3 MLJ 660, the Court of Appeal held that:

> [9] ... Section 50 gives jurisdiction to the Court of Appeal to hear appeals from criminal matters decided in the High Court and it includes appeals from sessions court and magistrates courts. However, s 50(2) provides a limitation to the manner that appeals emanates from magistrates court are brought to the Court of Appeal. It must be noted that s 50(2) provides generally and without qualification that 'an appeal shall lie to the Court of Appeal, with leave of the Court of Appeal'. It also

enacts that 'such appeal' shall only be confined to question of law.

[13] This principle was further echoed in the Court of Appeal case of *Nor Azman bin Ghadzali v Public Prosecutor* [2013] 1 MLJ 486, where it held as follows:

> [12] From the express wording of s 50 and in particular to sub-s (2) thereof, for the Court of Appeal to be conferred jurisdiction two pre-conditions must be fulfilled by the applicant, namely:
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> (a) a leave application must be filed within 14 days from the date of the High Court decision; and
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> (b) it must be shown in the leave application the question of law which arose in the course of the appeal and the determination of which by the High Court has affected the event of the appeal.
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> [13] The pre-requisites aforesaid was lucidly explained by Lamin Mohd Yunus PCA in *Public Prosecutor v Pasupathy s/o Kanagasaby* [2001] 2 MLJ 143; [2001] 2 CLJ 753 where he said:
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> When an accused person desires to appeal, the full force of sub-s
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> (2) comes into play. He has to apply for 'leave' and that his appeal must be confined to only questions of law which have arisen in the course of the appeal or revision and the determination of which by the High Court has affected the event of the appeal or revision.
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> ...
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> [17] The crucial element of 'question of law' must in our view relates to questions involving the interpretation of relevant and applicable legal principles. It is totally different from questions of facts which require references to facts and evidence and the inferences drawn from the facts. In essence questions of law are questions involving legal principles of wide applicability in diverse situations and not confined to any particular facts.

[14] In *Public Prosecutor v Mahathir bin Muhammad* [2013] 1 MLJ 50, the Court of Appeal speaking through Mohd Hishamudin JCA (as he then was) held as follows:

> [20] The rationale for limiting the appeal to question of law only is not difficult to appreciate. The cases that emanate from the magistrate's courts are relatively less serious in nature as compared to cases dealt with by the session courts, and in most cases, they involve only finding of facts. Hence, there is very minimal risk of real injustice if further appeals to the Court of Appeal should only be confined to questions of law.

A QUESTIONS OF LAW

[15] In the affidavit in support of the application (encl 2) before us, reference was made to six questions said to be such questions of law and they are as follows:

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(a) Sama ada terhadap perlanggaran nyata jelas seksyen 325(2) Kanun Tatacara Jenayah yang telah membawa kepada suatu 'miscarriage of justice' di mana tertuduh dan/atau peguamnya tidak dimaklumkan dan/atau tidak diberitahu dan/atau tidak diserahkan apa-apa mengenai permohonan semakan jenayah tersebut?

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(b) Sama ada terdapat perlanggaran secara tidak langsung seksyen 325(3) Kanun Tatacara Jenayah yang mana Yang Arif Hakim telah menukar suatu dapatan 'dilepaskan dan dibebaskan' (acquittal) kepada suatu 'dilepaskan tanpa dibebaskan' (discharge) dan selanjutnya diperintahkan pemohon boleh dituduh kembali atas pertuduhan yang sama?

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(c) Sama ada permohonan semakan yang dibuat oleh pihak Responden pada melalui suatu surat yang dikatakan bertarikh 11/8/2023 selepas tamat tempoh rayuan atas keputusan yang dibuat pada 26/6/2023 merupakan suatu penyalahgunaan proses mahkamah yang membawa kepada suata 'miscarriage of justice'?

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(d) Sama ada permohonan semakan yang dibuat oleh pihak Responden sendiri diluar tempoh rayuan boleh diterima bagi semakan di bawah seksyen 323 Kanun Tatacara Jenayah?

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(e) Sama ada terdapat perlanggaran yang nyata jelas Perkara 7(2),8(1) Perlembagaan Persekutuan Malaysia?

(f) Sama ada terdapat perlanggaran prinsip 'audi alteram partem' yang merupakan suatu prinsip asas dasar 'natural justice' dalam pendengaran semakan di Mahkamah Tinggi, Shah Alam di mana pemohon serta peguambela pemohon tidak dimaklumkan, tidak diberitahu dan tidak disertakan apa-apa mengenai permohonan semakan jenayah tersebut yang dijalankan, diteruskan dan diputuskan secara tersembunyi?

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THE APPLICANT'S CONTENTION

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[16] The applicant's s argument can be briefly summarised as follows:

(a) the applicant has satisfied the threshold required for leave to appeal;

(b) there appears to be a miscarriage of justice, particularly the provisions in Chapter XXXI of the Criminal Procedure Code under the heading Revision was clearly and blatantly not complied with during the revision;

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(c) the applicant and/or her counsel was not informed of the hearing of the matter;

(d) the High Court made the order without giving an opportunity to be heard by the applicant and/or her advocate who was on record from the beginning;

(e) the respondent has neglected to appeal but sought the High Court's powers of revisions as a back door appeal;

(f) the respondent failed to provide good reasons why the appeal was not filed against the decision of the learned magistrate and why no extension of time was filed;

(g) the revision application made by the respondent to the High Court seemed to have contravened arts 7 and 8 of the Federal Constitution; and

(h) the High Court failed to convert the matter into a hearing of an appeal.

THE RESPONDENT'S CONTENTION

[17] The learned deputy public prosecutor in his affidavit in reply affirmed on 3 October 2023 (encl 5) stated as follows:

(a) Merujuk kepada persoalan undang-undang yang dirangka seperti di dalam Notis UsuI di (Kandungan 1) di Lampiran A yang disertakan, di perenggan 1 sehingga 6 saya sesungguhnya menyatakan bahawa persoalan tersebut bukanlah persoalan undang-undang yang dikehendakkan di bawah peruntukan seksyen 50(2) Akta Mahkamah Kehakiman 1964 tetapi adalah persoalan fakta dan juga percampuran persoalan undang-undang dan fakta;

(b) Tambahan lagi, jika dilihat kepada perenggan 2 dan 3 persoalan yang dicadangkan oleh Pemohon jelas bukanlah suatu persoalan undang-undang kerana apa yang terlibat adalah hanya berkaitan isu pemfailan berganda (double filing) di mana semua urusan pentadbiran Mahkamah (administration of the court) bukanlah suatu persoalan undang-undang dan proses semakan jenayah di bawah seksyen 325(3) Kanun Tatacara Jenayah tidak tertakluk kepada tempoh 14 hari sepertimana rayuan jenayah;

(c) Selain itu, Responden menyatakan bahawa persoalan yang dicadangkan di perenggan 4, 5 dan 6 bukanlah suatu persoalan undang-undang yang perlu diputuskan oleh Mahkamah Rayuan yang mulia ini kerana tidak timbul isu perlanggaran Perkara 7(2) mahupun Perkara 8(1) Perlembagaan Persekutuan kerana apa yang terjadi hanyalah kesilapan pendaftaran berganda (double filing) di mana kes BD-82-8-06/2023, yang mana pertuduhan di dalam kes tersebut, adalah sama dengan pertuduhan di dalam kes BD-82-6-06/2023. Akibat daripada pemfailan berganda itu, pihak pendakwaan telah mohon untuk kes

BD-82-8-06/2023 di dilepaskan tanpa dibebaskan (DNAA) yang mana Mahkamah Majistret telah memberikan perintah lepas dan bebas (acquitted and discharge); dan

(d) Selain itu, Responden ingin deposkan di sini bahawa Responden tidak mempunyai sebarang bantahan sekiranya kes BD-82-8-06/2023 yang telah dilakukan pemfailan berganda (double filing) dibatalkan secara pentadbiran, dan pendakwaan boleh diteruskan terhadap Pemohon untuk pertuduhan-pertuduhan di dalam kes BD-82-6-06/2023 yang mana ianya didaftarkan terlebih dahulu terhadap Pemohon. lni kerana tidak ada isu pendakwaan berganda (double jeopardy) terhadap Pemohon ini dan yang berlaku hanyalah kesilapan pemfailan berganda sewaktu kes didaftarkan di Mahkamah Majistret.

OUR DECISIONS

[18] Before turning to the findings of this honourable court, we find it necessary to begin by examining two reported decisions on revisionary powers of the High Court.

[19] The power of revision by the High Court are found in s 31 of the Courts of Judicature Act 1964 and s 325 of the Criminal Procedure Code. In *Public Prosecutor v Sogas Trading* [2020] 10 MLJ 258; [2020] MLRHU 127, Mohd Radzi Abdul Hamid JC (as he then was) said:

> [17] It is well established law that the court will generally exercise its revisionary powers where the lower court fails to comply with the provisions of the law, the decision is grossly erroneous, the findings of fact are not supported by evidence, material evidence of the parties are not considered, there has been an error of law or procedure and where the revision is demanded in the interest of public interest. The primary objective of a revision is to correct a miscarriage of justice which has affected the applicant and the High Court's powers of revision are to be exercised sparingly and judiciously.
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> ...
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> [21] Therefore, when an applicant neglects to file an appeal against an appealable decision the applicant cannot use the High Court's powers of revision as a back door appeal (See *Ong She Sen v Public Prosecutor* [2008] 4 MLRH 530; [2010] 7 CLJ 220). It is incumbent on the applicant to provide to the court very good reasons why an appeal was not filed. If the appeal was restricted because the applicant was out of time, the applicant must show evidence that an application for an extension of time to file the appeal was made. In the recent decision of *Muhammad Nuzul Ikram Nurullail & Ors v Public Prosecutor* [2008] MLJU 764; [2018] MLRHU 271; [2018] 3 AMR 182 the High Court dismissed an application for revision when the applicant failed to file an appeal against an appealable decision.

[20] In *Manokaran & Anor v Public Prosecutor* [1979] 1 MLJ 262,

Abdoolcader J (as he then was) dealt with the revisionary power in the following way:

> I have however not only extensive powers of revision in criminal proceedings under the provisions of s 325 of the Criminal Procedure Code but even wider powers conferred by s 35 of the Courts of Judicature Act 1964, and the deputy public prosecutor agrees that in a case like this where there is an appeal against conviction on a plea of guilty it is open to me to deal with the conviction in the exercise of my power of revision if the circumstances of the case so warrant. I would merely add that in my view notwithstanding the provisions of s 305 of the Criminal Procedure Code an appeal against a conviction on a plea of guilty will still lie if the charge discloses no offence in law, in which event the conviction itself would be illegal and a nullity.
>
> It is true that the matters complained of in this appeal have been brought to my notice by way of a record of appeal and the proceedings before me are headed in the criminal appeal, but, as I pointed out to, counsel on both sides of the outset of this hearing, it is nevertheless open to me notwithstanding this to exercise my powers of revision in this matter, and I referred in this regard to the decision of the Privy Council in *In re Chunbidya & Ors* to the effect that *when the High Court has before it on appeal a record of criminal proceedings, it can proceed to exercise its powers of revision if it chooses to do so and make the requisite order* although precluded by another provision in the Criminal Procedure Code from doing so in the appeal. (Emphasis added).

[21] Based upon the principles of law stated above, we find that the orders of DNAA and a further order that the applicant can be charged again on the said offences made by the learned judicial commissioner upon revision without the applicant and/or her counsel been notified of the hearing of the matter and be given an opportunity of being heard in this matter is gravely prejudicial and has certainly occasioned a serious miscarriage of justice to the applicant. The outcome of the revision might not be the same if the applicant had been heard on this critical issue. The argument raised by the learned deputy public prosecutor that the issue of double filing of the same charges was merely a 'technical glitch', with respect could not hold water.

[22] In the circumstances it is plain and obvious that there was a breach of the rules of natural justice in that the *audi alteram partem* rule had not been observed when the applicant was denied the notice and opportunity to answer the issues and to defend herself. In addition, there is also clear breach of *Arahan Pentadbiran Ketua Pendaftar Mahkamah Persekutuan Malaysia Bil 2 Tahun 2018*, para 3(e)(iii) (although it has no binding effect on this honourable court) which is reproduced herein:

[23] In the context of natural justice and its relation to the administrative powers, Raja Azlan Shah Ag LP (as His Royal Highness then was) in *Ketua Pengarah Kastam v Ho Kwan Seng* [1977] 2 MLJ 152 held that:

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> The rule of natural justice that no man may be condemned unheard applies to every case where an individual is adversely affected by an administrative action, no matter whether it is labelled 'judicial', 'quasi-judicial,' or 'administrative' or whether or not the enabling statute makes provision for a hearing.

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[24] The above authority further shows that there are questions of law here which requires serious discussion.

[25] Finally, although the respondent is not estopped from filing an application for revision in preference to an appeal, nevertheless we find that no
C reasons have been offered by the learned deputy public prosecutor why an appeal was not filed against the decision of the learned magistrate within the time permitted by law.

CONCLUSION

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[26] Having regard to all the foregoing reasons and the submissions made, we unanimously allowed the applicant notice of motion (encl 1) para (a), (b), (c), (d), and (f) for leave to appeal since there are questions of law which have arisen in the course of the revision.

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Notice of motion allowed.

Reported by Ahmad Ismail

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